

Rev. 4/18

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT  
CIVIL APPEAL STATEMENT**

*Please TYPE. Attach additional pages if necessary.*

11th Circuit Docket Number: 23-11528

Caption: <b>State of Florida v. United States, et al.,</b>	District and Division: Northern District of Florida, Pensacola Division Name of Judge: T. Kent Wetherell II Nature of Suit: Administrative Procedures Act challenge to agency action
	Date Complaint Filed: September 28, 2021 District Court Docket Number: 3:21-cv-1066
	Date Notice of Appeal Filed: May 5, 2023 <input type="checkbox"/> Cross Appeal <input type="checkbox"/> Class Action
	Has this matter previously been before this court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide (a) Caption: _____ (b) Citation: _____ (c) Docket Number: _____

For Appellant:	Attorney Name	Mailing Address	Telephone, Fax, Email
<input type="checkbox"/> Plaintiff	Joseph A. Darrow	P.O. Box 868, Ben	Phone: 202-598-7537
<input checked="" type="checkbox"/> Defendant	Elissa P. Fudim	Franklin Station,	Email:
<input type="checkbox"/> Other (Specify)	Erin T. Ryan	Washington, DC 20044	joseph.a.darrow@usdoj.gov
	Erez Reuveni		

For Appellee:	Attorney Name	Mailing Address	Telephone, Fax, Email
<input checked="" type="checkbox"/> Plaintiff	Henry C. Whitaker	Office of the Attorney	Phone: 850-414-3300
<input type="checkbox"/> Defendant	Daniel W. Bell	General, PL-01 THE	Email:
<input type="checkbox"/> Other (Specify)	Derrick Monson	CAPITOL,	henry.whitaker@myfloridalegal.com
	James H. Percival II	Tallahassee, FL	
	Fla. Att'y Gen. Service	32399-1050	

*Please CIRCLE/CHECK/COMPLETE the items below and on page 2 that apply.*

Jurisdiction	Nature of Judgment	Type of Order	Relief
<input checked="" type="checkbox"/> Federal Question <input type="checkbox"/> Diversity <input type="checkbox"/> US Plaintiff	<input checked="" type="checkbox"/> Final Judgment, 28 USC 1291 <input type="checkbox"/> Interlocutory Order, 28 USC 1292(a)(1) <input type="checkbox"/> Interlocutory Order Certified, 28 USC 1292(b) <input type="checkbox"/> Interlocutory Order, Qualified Immunity <input type="checkbox"/> Final Agency Action (Review) <input type="checkbox"/> 54(b)	<input type="checkbox"/> Dismissal/Jurisdiction <input type="checkbox"/> Default Judgment <input type="checkbox"/> Summary Judgment <input checked="" type="checkbox"/> Judgment/Bench Trial <input type="checkbox"/> Judgment/Jury Verdict <input type="checkbox"/> Judgment/Directed Verdict/NOV <input type="checkbox"/> Injunction <input checked="" type="checkbox"/> Other <u>Vacatur and remand</u>	Amount Sought by Plaintiff: \$ <u>0</u>  Amount Sought by Defendant: \$ <u>0</u>  Awarded: \$ <u>0</u> to _____  Injunctions: <input type="checkbox"/> TRO <input checked="" type="checkbox"/> Preliminary Permanent <input type="checkbox"/> Granted <input type="checkbox"/> Denied

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Based on your present knowledge:

- (1) Does this appeal involve a question of First Impression?  Yes  No  
 What is the issue you claim is one of First Impression? Whether the Parole+ATD policy exceeds the government's authority under 8 U.S.C. 1182(d)(5)(A)
- (2) Will the determination of this appeal turn on the interpretation or application of a particular case or statute?  Yes  No  
 If Yes, provide  
 (a) Case Name/Statute 8 U.S.C. 1225(b); 8 U.S.C. 1182(d)(5)(A); 8 U.S.C. 1252(f)(1)  
 (b) Citation \_\_\_\_\_  
 (c) Docket Number if unreported \_\_\_\_\_
- (3) Is there any case now pending or about to be brought before this court or any other court or administrative agency that  
 (a) Arises from substantially the same case or controversy as this appeal?  Yes  No  
 (b) Involves an issue that is substantially the same, similar, or related to an issue in this appeal?  Yes  No  
 If Yes, provide  
 (a) Case Name State of Florida v. Alejandro Mayorkas, et al.  
 (b) Citation \_\_\_\_\_  
 (c) Docket Number if unreported No. 23-11644  
 (d) Court or Agency U.S. Court of Appeals for the Eleventh Circuit
- (4) Will this appeal involve a conflict of law  
 (a) Within the Eleventh Circuit?  Yes  No  
 (b) Among circuits?  Yes  No

If Yes, explain briefly:

**Arizona v. Biden**, 40 F.4th 375, 391 (6th Cir. 2022), suggests a conflict as to whether "shall" in immigration statutes precludes law enforcement discretion.

- (5) Issues proposed to be raised on appeal, including jurisdictional challenges:

(1) Whether Florida lacks standing; (2) whether Florida challenges agency action that is committed to agency discretion, not "final" agency action, and whose review is precluded by statute and the zone of interests test; (3) whether the Parole+ATD policy violates the "case-by-case," "urgent humanitarian interests or significant public benefit," and "return to custody" requirements of 8 U.S.C. 1182(d)(5)(A); (4) whether Parole+ATD is arbitrary and capricious; (5) whether Parole+ATD is required to undergo notice and comment; (6) whether the order exceeded the permissible scope of relief.

I CERTIFY THAT I SERVED THIS CIVIL APPEAL STATEMENT ON THE CLERK OF THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND

SERVED A COPY ON EACH PARTY OR THEIR COUNSEL OF RECORD, THIS 23 DAY OF May, 2023.

Joseph A. Darrow

NAME OF COUNSEL (Print)

s/Joseph A. Darrow

SIGNATURE OF COUNSEL